

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

MICHAEL DAVIS-GUIDER,

Plaintiff,

-against-

**ANSWER TO THIRD AMENDED
COMPLAINT ON BEHALF OF
CHARLES MCDONALD**

Case No.: 1:17-cv-1290
(FJS/DJS)

CITY OF TROY, RONALD FOUNTAIN, Individually,
DANIELLE COONRADT, Individually, CHARLES
MCDONALD, Individually, TIM COLANERI, Individually,
ADAM R. MASON, Individually, RENSSELAER COUNTY,
MICHAEL SIKIRICA, Individually, and JOEL ABELOVE, Individually,

Defendants.

This defendant, Charles McDonald for his Answer to the Third Amended Complaint (“Complaint”) of the plaintiff states as follows:

PRELIMINARY STATEMENT

1. Denies that he has any knowledge or information sufficient to form a belief as to the truth thereof of any of the allegations contained in paragraph of the Complaint marked and numbered “1”.

JURISDICTION

2. Denies that he has any knowledge or information sufficient to form a belief as to the truth thereof of any of the allegations contained in the paragraph of the Complaint marked and numbered “2”.

3. Denies that he has any knowledge or information sufficient to form a belief as to the truth thereof of any of the allegations contained in the paragraph of the Complaint marked

and numbered “3”.

VENUE

4. Denies that he has any knowledge or information sufficient to form a belief as to the truth thereof of any of the allegations contained in the paragraph of the Complaint marked and numbered “4”.

JURY DEMAND

5. Denies that he has any knowledge or information sufficient to form a belief as to the truth thereof of any of the allegations contained in the paragraph of the Complaint marked and numbered “5”.

PARTIES

6. Denies that he has any knowledge or information sufficient to form a belief as to the truth thereof of any of the allegations contained in the paragraph of the Complaint marked and numbered “6”.

7. Denies that he has any knowledge or information sufficient to form a belief as to the truth thereof of any of the allegations contained in the paragraph of the Complaint marked and numbered “7”.

8. Denies that he has any knowledge or information sufficient to form a belief as to the truth thereof of any of the allegations contained in the paragraph of the Complaint marked and numbered “8”.

9. Denies that he has any knowledge or information sufficient to form a belief as to the truth thereof of any of the allegations contained in the paragraph of the Complaint marked and numbered “9” except admits that he was a duly sworn police officer/detective of the Troy

Police Department (“TPD”).

10. Denies that he has any knowledge or information sufficient to form a belief as to the truth thereof of any of the allegations contained in the paragraph of the Complaint marked and numbered “10”.

11. Denies that he has any knowledge or information sufficient to form a belief as to the truth thereof of any of the allegations contained in the paragraph of the Complaint marked and numbered “11”.

12. Denies that he has any knowledge or information sufficient to form a belief as to the truth thereof of any of the allegations contained in the paragraph of the Complaint marked and numbered “12”.

13. Denies that he has any knowledge or information sufficient to form a belief as to the truth thereof of any of the allegations contained in the paragraph of the Complaint marked and numbered “13”.

14. Denies that he has any knowledge or information sufficient to form a belief as to the truth thereof of any of the allegations contained in the paragraph of the Complaint marked and numbered “14”.

15. Denies that he has any knowledge or information sufficient to form a belief as to the truth thereof of any of the allegations contained in the paragraph of the Complaint marked and numbered “15”.

16. Denies that he has any knowledge or information sufficient to form a belief as to the truth thereof of any of the allegations contained in the paragraph of the Complaint marked and numbered “16”.

17. Denies that he has any knowledge or information sufficient to form a belief as to the truth thereof of any of the allegations contained in the paragraph of the Complaint marked and numbered “17”.

18. Denies that he has any knowledge or information sufficient to form a belief as to the truth thereof of any of the allegations contained in the paragraph of the Complaint marked and numbered “18”.

19. Denies that he has any knowledge or information sufficient to form a belief as to the truth thereof of any of the allegations contained in the paragraph of the Complaint marked and numbered “19”.

20. Denies that he has any knowledge or information sufficient to form a belief as to the truth thereof of any of the allegations contained in the paragraph of the Complaint marked and numbered “20”.

21. Denies that he has any knowledge or information sufficient to form a belief as to the truth thereof of any of the allegations contained in the paragraph of the Complaint marked and numbered “21”.

22. Denies that he has any knowledge or information sufficient to form a belief as to the truth thereof of any of the allegations contained in the paragraph of the Complaint marked and numbered “22”.

23. Denies that he has any knowledge or information sufficient to form a belief as to the truth thereof of any of the allegations contained in the paragraph of the Complaint marked and numbered “23” except admits that V.D. was pronounced dead.

24. Admits so much of paragraph numbered “24” of the Complaint as alleges that the

plaintiff was questioned by this defendant but denies the remaining allegations of said paragraph “24”.

25. Denies that he has any knowledge or information sufficient to form a belief as to the truth thereof of any of the allegations contained in the paragraph of the Complaint marked and numbered “25”.

26. Denies each and every allegation contained in the paragraph of the Complaint marked and numbered “26” insofar as said allegations refer to this defendant, except admits that defendant Sikirica performed an autopsy on V.D.

27. Denies that he has any knowledge or information sufficient to form a belief as to the truth thereof of any of the allegations contained in the paragraph of the Complaint marked and numbered “27”.

28. Denies that he has any knowledge or information sufficient to form a belief as to the truth thereof of any of the allegations contained in the paragraph of the Complaint marked and numbered “28”.

29. Denies each and every allegation contained in the paragraph of the Complaint marked and numbered “29” insofar as said allegations refer to this defendant, except admits that Mr. Davis-Guider was questioned.

30. Denies each and every allegation contained in the paragraph of the Complaint marked and numbered “30” insofar as said allegations refer to this defendant, except admits that Mr. Davis-Guider was questioned.

31. Denies each and every allegation contained in the paragraph of the Complaint marked and numbered “31” insofar as said allegations refer to this defendant.

32. Denies each and every allegation contained in the paragraph of the Complaint marked and numbered “32” insofar as said allegations refer to this defendant.

33. Denies each and every allegation contained in the paragraph of the Complaint marked and numbered “33” insofar as said allegations refer to this defendant, except admits that a meeting was held.

34. Denies that he has any knowledge or information sufficient to form a belief as to the truth thereof of any of the allegations contained in the paragraph of the Complaint marked and numbered “34” except admits that defendant Sikirica ruled V.D.’s death a homicide.

35. Denies that he has any knowledge or information sufficient to form a belief as to the truth thereof of any of the allegations contained in the paragraph of the Complaint marked and numbered “35”.

36. Denies that he has any knowledge or information sufficient to form a belief as to the truth thereof of any of the allegations contained in paragraph of the Complaint marked and numbered “36”.

37. Denies each and every allegation contained in the paragraph of the Complaint marked and numbered “37”, insofar said allegations pertain to this defendant, except admits that defendant Sikirica ruled V.D.’s death a homicide.

38. Denies each and every allegation contained in the paragraph of the Complaint marked and numbered “38”, insofar said allegations pertain to this defendant.

39. Denies each and every allegation contained in the paragraph of the Complaint marked and numbered “39”, insofar said allegations pertain to this defendant.

40. Denies each and every allegation contained in the paragraph of the Complaint

marked and numbered “40”, insofar said allegations pertain to this defendant.

41. Denies each and every allegation contained in the paragraph of the Complaint marked and numbered “41.”, insofar said allegations pertain to this defendant.

42. Denies each and every allegation contained in the paragraph of the Complaint marked and numbered “42”, insofar said allegations pertain to this defendant.

43. Admits the allegations contained in the paragraph of the Complaint marked and numbered “43”.

44. Admits the allegations contained in the paragraph of the Complaint marked and numbered “44”.

45. Admits the allegations contained in the paragraph of the Complaint marked and numbered “45”.

46. Denies each and every allegation contained in the paragraph of the Complaint marked and numbered “46”, insofar said allegations pertain to this defendant.

47. Denies each and every allegation contained in the paragraph of the Complaint marked and numbered “47”, insofar said allegations pertain to this defendant.

48. Denies each and every allegation contained in the paragraph of the Complaint marked and numbered “48”, insofar said allegations pertain to this defendant.

49. Denies each and every allegation contained in the paragraph of the Complaint marked and numbered “49”, insofar said allegations pertain to this defendant.

50. Denies each and every allegation contained in the paragraph of the Complaint marked and numbered “50”, insofar said allegations pertain to this defendant.

51. Denies that he has any knowledge or information sufficient to form a belief as to

the truth thereof of any of the allegations contained in the paragraph of the Complaint marked and numbered “51”.

52. Denies that he has any knowledge or information sufficient to form a belief as to the truth thereof of any of the allegations contained in the paragraph of the Complaint marked and numbered “52”.

53. Denies that he has any knowledge or information sufficient to form a belief as to the truth thereof of any of the allegations contained in the paragraph of the Complaint marked and numbered “53”.

54. Denies that he has any knowledge or information sufficient to form a belief as to the truth thereof of any of the allegations contained in the paragraph of the Complaint marked and numbered “54”.

55. Denies that he has any knowledge or information sufficient to form a belief as to the truth thereof of any of the allegations contained in the paragraph of the Complaint marked and numbered “55”.

56. Denies that he has any knowledge or information sufficient to form a belief as to the truth thereof of any of the allegations contained in the paragraph of the Complaint marked and numbered “56”.

57. Denies that he has any knowledge or information sufficient to form a belief as to the truth thereof of any of the allegations contained in the paragraph of the Complaint marked and numbered “57”.

58. Denies that he has any knowledge or information sufficient to form a belief as to the truth thereof of any of the allegations contained in the paragraph of the Complaint marked

and numbered “58”.

59. Denies each and every allegation contained in the paragraph of the Complaint marked and numbered “59”, insofar as said allegations pertain to this defendant.

60. Denies each and every allegation contained in the paragraph of the Complaint marked and numbered “60”, insofar as said allegations pertain to this defendant.

61. Denies each and every allegation contained in the paragraph of the Complaint marked and numbered “61”, insofar as said allegations pertain to this defendant.

62. Denies each and every allegation contained in the paragraph of the Complaint marked and numbered “62”, insofar as said allegations pertain to this defendant.

63. Denies each and every allegation contained in the paragraph of the Complaint marked and numbered “63”, insofar as said allegations pertain to this defendant.

AS TO THE FIRST CAUSE OF ACTION

64. This defendant repeats and realleges each and every response contained in the paragraphs of this Answer marked and numbered “1” through “63”, inclusive, with the same force and effect as if again set forth at length here.

65. Denies each and every allegation contained in the paragraph of the Complaint marked and numbered “65”, insofar as said allegations pertain to this defendant.

66. Denies each and every allegation contained in the paragraph of the Complaint marked and numbered “66”, insofar as said allegations pertain to this defendant.

AS TO THE SECOND CAUSE OF ACTION

67. This defendant repeats and realleges each and every response set forth in the paragraphs of this Answer marked and numbered “1” through “66”, inclusive, with the same

force and effect as if again set forth at length here.

68. Denies each and every allegation contained in the paragraph of the Complaint marked and numbered “68”, insofar as said allegations pertain to this defendant.

69. Denies each and every allegation contained in the paragraph of the Complaint marked and numbered “69”, insofar as said allegations pertain to this defendant.

70. Denies each and every allegation contained in the paragraph of the Complaint marked and numbered “70”, insofar as said allegations pertain to this defendant.

71. Denies each and every allegation contained in the paragraph of the Complaint marked and numbered “71”, insofar as said allegations pertain to this defendant.

72. Denies each and every allegation contained in the paragraph of the Complaint marked and numbered “72”, insofar as said allegations pertain to this defendant.

73. Denies each and every allegation contained in the paragraph of the Complaint marked and numbered “73”, insofar as said allegation pertain to this defendant.

74. Denies each and every allegation contained in paragraph of the Complaint marked and numbered “74”, insofar as said allegations pertain to this defendant.

75. Denies each and every allegation contained in the paragraph of the Complaint marked and numbered “75”, insofar as said allegations pertain to this defendant.

76. Denies each and every allegation contained in the paragraph of the Complaint marked and numbered “76”, insofar as said allegations pertain to this defendant.

AS TO THE THIRD CAUSE OF ACTION

77. This defendant repeats and realleges each and every response contained in the paragraphs of this Answer marked and numbered “1” through “76”, inclusive, with the same

force and effect as if again set forth at length here.

78. Denies each and every allegation contained in the paragraph of the Complaint marked and numbered “78”, insofar as said allegations pertain to this defendant.

79. Denies each and every allegation contained in the paragraph of the Complaint marked and numbered “79”, insofar as said allegations pertain to this defendant.

80. Denies each and every allegation contained in the paragraph of the Complaint marked and numbered “80”, insofar as said allegations pertain to this defendant.

81. Denies each and every allegation contained in the paragraph of the Complaint marked and numbered “81”, insofar as said allegations pertain to this defendant.

AS TO THE FOURTH CAUSE OF ACTION

82. This defendant repeats and reallages each and every response contained in the paragraphs of this Answer marked and numbered “1” through “81” of this Answer, with the with the same force and effect as if again set forth at length here.

83. Denies each and every allegation contained in the paragraph of the Complaint marked and numbered “83”, insofar as said allegations pertain to this defendant.

84. Denies each and every allegation contained in the paragraph of the Complaint marked and numbered “84”, insofar as said allegations pertain to this defendant.

85. Denies each and every allegation contained in the paragraph of the Complaint marked and numbered “85”, insofar as said allegations pertain to this defendant.

86. Denies each and every allegation contained in the paragraph of the Complaint marked and numbered “86”, insofar as said allegations pertain to this defendant.

AS TO THE FIFTH CAUSE OF ACTION

87. This defendant repeats and realleges each and every response contained in the paragraphs of this Answer marked and numbered “1” through “86” of this Answer with the same force and effect as if again set forth at length here.

88. Denies each and every allegation contained in the paragraph of the Complaint marked and numbered “88”, insofar as said allegations pertain to this defendant.

89. Denies each and every allegation contained in the paragraph of the Complaint marked and numbered “89”, insofar as said allegations pertain to this defendant.

90. Denies each and every allegation contained in the paragraph of the Complaint marked and numbered “90”, insofar as said allegations pertain to this defendant.

AS TO THE SIXTH CAUSE OF ACTION

91. This defendant repeats and realleges each and every response contained in the paragraphs of this Answer marked and numbered “1” through “90”, inclusive, with the same force and effect as if again set forth at length here.

92. Denies that he has any knowledge or information sufficient to form a belief as to the truth thereof of any of the allegations contained in the paragraph of the Complaint marked and numbered “92”.

93. Denies that he has any knowledge or information sufficient to form a belief as to the truth thereof of any of the allegations contained in the paragraph of the Complaint marked and numbered “93”, inclusive.

94. Denies that he has any knowledge or information sufficient to form a belief as to the truth thereof of any of the allegations contained in the paragraph of the Complaint marked

and numbered “94”, inclusive.

95. Denies that he has any knowledge or information sufficient to form a belief as to the truth thereof of any of the allegations contained in the paragraph of the Complaint marked and numbered “95”.

96. Denies that he has any knowledge or information sufficient to form a belief as to the truth thereof of any of the allegations contained in the paragraph of the Complaint marked and numbered “96”.

97. Denies that he has any knowledge or information sufficient to form a belief as to the truth thereof of any of the allegations contained in the paragraph of the Complaint marked and numbered “97”.

98. Denies each and every allegation contained in the paragraph of the Complaint marked and numbered “98”, insofar as said allegation pertain to this defendant.

99. Denies each and every allegation contained in paragraph of the Complaint marked and numbered “99”, insofar as said allegations pertain to this defendant.

100. Denies each and every allegation contained in the paragraph of the Complaint marked and numbered “100”, insofar as said allegations pertain to this defendant.

101. Denies each and every allegation contained in the paragraph of the Complaint marked and numbered “101”, insofar as said allegations pertain to this defendant.

102. Denies each and every allegation contained in the paragraph of the Complaint marked and numbered “102”, insofar as said allegations pertain to this defendant.

103. Denies each and every allegation contained in the paragraph of the Complaint marked and numbered “103”, insofar as said allegations pertain to this defendant.

AS TO THE SEVENTH CAUSE OF ACTION

104. This defendant repeats and realleges each and every response contained in the paragraphs of this Answer marked and numbered “1” through “103”, inclusive, with the same force and effect as if again set forth at length here.

105. Denies that he has any knowledge or information sufficient to form a belief as to the truth thereof as to any of the allegations contained in the paragraph of the Complaint marked and numbered “105”.

106. Denies that he has any knowledge or information sufficient to form a belief as to the truth thereof as to any of the allegations contained in the paragraph of the Complaint marked and numbered “106”.

107. Denies that he has any knowledge or information sufficient to form a belief as to the truth thereof as to any of the allegations contained in the paragraph of the Complaint marked and numbered “107”.

108. Denies that he has any knowledge or information sufficient to form a belief as to the truth thereof as to any of the allegations contained in the paragraph of the Complaint marked and numbered “108”.

109. Denies that he has any knowledge or information sufficient to form a belief as to the truth thereof as to any of the allegations contained in the paragraph of the Complaint marked and numbered “109”.

110. Denies that he has any knowledge or information sufficient to form a belief as to the truth thereof as to any of the allegations contained in the paragraph of the Complaint marked and numbered “110”.

111. Denies each and every allegation contained in the paragraph of the Complaint marked and numbered “111”, insofar as said allegations pertain to this defendant.

112. Denies each and every allegation contained in the paragraph of the Complaint marked and numbered “112”, inclusive, insofar as said allegations pertain to this defendant.

113. Denies each and every allegation contained in the paragraph of the Complaint marked and numbered “113”, insofar as said allegations pertain to this defendant.

AS TO THE SUPPLEMENTAL STATE LAW CLAIMS

114. This defendant repeats and realleges each and every response set forth in the paragraphs of this Answer marked and numbered “1” through “113”, inclusive, with the same force and effect as if again set forth at length here.

115. Denies that he has any knowledge or information sufficient to form a belief as to the truth thereof as to any of the allegations contained in the paragraph of the Complaint marked and numbered “115”.

116. Denies that he has any knowledge or information sufficient to form a belief as to the truth thereof as to any of the allegations contained in the paragraph of the Complaint marked and numbered “116”.

117. Denies that he has any knowledge or information sufficient to form a belief as to the truth thereof as to any of the allegations contained in the paragraph of the Complaint marked and numbered “117”.

118. Denies that he has any knowledge or information sufficient to form a belief as to the truth thereof as to any of the allegations contained in the paragraph of the Complaint marked and numbered “118”.

119. Denies that he has any knowledge or information sufficient to form a belief as to the truth thereof as to any of the allegations contained in the paragraph of the Complaint marked and numbered “119”.

AS TO THE EIGHTH CAUSE OF ACTION

120. This defendant repeats and realleges each and every response contained in the paragraphs of this Answer marked and numbered “1” through “119”, inclusive, with the same force and effect as if again set forth at length here.

121. Denies each and every allegation contained in the paragraph of the Complaint marked and numbered “121”, insofar as said allegations pertain to this defendant.

122. Denies that he has any knowledge or information sufficient to form a belief as to the truth thereof as to any of the allegations contained in the paragraph of the Complaint marked and numbered “122”.

123. Denies that he has any knowledge or information sufficient to form a belief as to the truth thereof as to any of the allegations contained in the paragraph of the Complaint marked and numbered “123”.

124. Denies that he has any knowledge or information sufficient to form a belief as to the truth thereof as to any of the allegations contained in the paragraph of the Complaint marked and numbered “124”.

GENERAL DENIAL

125. This defendant denies any of the allegations of the Complaint not specifically admitted, denied or controverted herein and denies that plaintiff is entitled to any of the relief requested in the Wherefore clause of the Complaint.

**AS AND FOR A FIRST AFFIRMATIVE DEFENSE,
THIS DEFENDANT ALLEGES:**

126. That probable cause existed for the interrogation, arrest and prosecution of the plaintiff.

**AS AND FOR A SECOND AFFIRMATIVE DEFENSE,
THIS DEFENDANT ALLEGES:**

127. That this defendant is not legally responsible for any tortious or negligent conduct, if any, on the part of the co-defendants herein.

**AS AND FOR A THIRD AFFIRMATIVE DEFENSE,
THIS DEFENDANT ALLEGES:**

128. Upon information and belief that this action and all claims set forth in the Complaint are barred by the applicable statutes of limitation.

**AS AND FOR A FOURTH AFFIRMATIVE DEFENSE,
THIS DEFENDANT ALLEGES:**

129. That the Complaint does not allege facts sufficient to state a valid claim against this defendant.

**AS AND FOR A FIFTH AFFIRMATIVE DEFENSE,
THIS DEFENDANT ALLEGES:**

130. Upon information and belief, that all of the damages, if any, sustained by the plaintiff as alleged and described in the Complaint herein were caused solely and wholly by reason of the tortious and/or negligent conduct of others over whom this defendant had no control for which this defendant is not legally liable.

**AS AND FOR A SIXTH AFFIRMATIVE DEFENSE,
THIS DEFENDANT ALLEGES:**

131. That the plaintiff was indicted on the charges for which he was arrested by a

Grand Jury sitting in Rensselaer County and this created a presumption at law that there was probable cause to arrest, detain and prosecute him.

**AS AND FOR A SEVENTH AFFIRMATIVE DEFENSE,
THIS DEFENDANT ALLEGES:**

132. That he is entitled to absolute immunity as to any and all testimony he gave before the Grand Jury of Rensselaer County and/or at the trial of the plaintiff in the Rensselaer County Court.

**AS AND FOR AN EIGHTH AFFIRMATIVE DEFENSE,
THIS DEFENDANT ALLEGES:**

133. That he is entitled to qualified immunity as to each and every claim of the plaintiff brought pursuant to Title 42 U.S.C., Section 1983.

**FOR A CROSS CLAIM AGAINST THE CO-DEFENDANTS,
COUNTY OF RENSSELAER, MICHAEL SIKIRICA, AND JOEL ABELOVE
THIS DEFENDANT ALLEGES:**

134. Upon information and belief, that the damages, if any, sustained by the plaintiff as alleged and described in the Complaint herein were caused wholly, or in part, by the negligent and/or tortious conduct of the said co-defendants and by reason thereof this defendant is entitled to indemnification/contribution from said co-defendants as to any damages recovered herein by the plaintiff against this defendant.

**AS AND FOR A COUNTERCLAIM AGAINST THE PLAINTIFF,
THIS DEFENDANT ALLEGES:**

135. Upon information and belief, that this defendant is entitled to recover of the plaintiff its attorneys' fees and expenses incurred in the defense of this action in the event that said defendant is successful in the outcome of the claims brought against it by the plaintiff herein.

WHEREFORE, this answering defendant demands judgment dismissing the Complaint of the plaintiff herein or, in the alternative, plaintiff demands judgment for indemnification/contribution over and against the co-defendants, Rensselaer County, Michael Sikirica and Joel Abelow as to any damages recovered against him herein by the plaintiff in this action.

Dated: April 14, 2020.

/s Rhiannon I. Spencer

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